

Remarks/Arguments

The Examiner has identified four groups of claims:

Group I. Claims 1-91 and 93, drawn to a drug-polymer conjugate having a general formula PXD as disclosed, classified in class 424, subclass 078.

Group II. Claim 92, drawn to a method of the preparation of the drug polymer conjugate of Group I (formula III), classified in class 424, subclass 078.

Group III. Claim 96, drawn to a method of the preparation of the drug polymer conjugate of Group I (formula IV), classified in class 424, subclass 078.

Group IV. Claims 94 and 95, drawn to a process for the preparation of compounds of claim 93 (Group I), classified in class 424, subclass 078.

The Examiner has required Applicants under 35 U.S.C. §121 to elect one of the four groups. Applicants provisionally elect Group I with traverse. In electing Group I, the Examiner has further required Applicants under 35 U.S.C. §121 to elect a species from formulas I-V of Group I. Applicants provisionally elect, with traverse, the drug polymer conjugate of formula III, wherein R¹ is methyl, R² is -S-, R³ is -CH₂-, R⁴ is OR⁷, R⁷ is COR⁹, R⁸ is methyl and R⁹ is methyl, without being combined with an effective amount of a specific agent, wherein the pathological condition is non-small cell lung cancer and which correspond to claims 1-8 and 68-73. Applicants request reconsideration and withdrawal of the restriction requirement.

The Examiner is required to examine claims together if the search and examination can be made without serious burden, even if the claims are independent or distinct. In this case, it is clear that Groups I-IV can be searched and examined together without serious burden; these claims are all classified in the same class and subclass, so the Examiner would not have to do additional searching.

Furthermore, the Examiner has not shown that the drug polymer conjugate species, as claimed, are independent and distinct or that the corresponding method claims are independent and distinct. The Examiner has stated that the drug polymer conjugate species claimed are independent because each disclosed formula is structurally different. The structural differences the Examiner asserts are minor and refer to attachment of the polymer component at the 11-position versus the 17-position of the Wortmannin compound. The polymer components are the same and the methods for attaching the polymer are the same.

The Examiner's analysis is not determinative, however, since the formulas I-V of the drug polymer conjugate belong to the same class and subclass.

It would be a significant burden on the Office, the public and the Applicants if at least four applications had to be filed and examined separately and at least four patents were issued, instead of one. The Office would have to deal with an increased workload, despite its current significant backlog. Applicants would have to pay four times the fees and invest four times as much time, which could be better spent in pursuit of the useful arts. The public would not be well served and would have to consider at least four patents instead of one in any infringement analysis.

For all the foregoing reasons, Applicants respectfully request that all claims be examined together in this application.



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